

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

KENNY SMITH, et al.,)	
)	
Plaintiffs,)	
)	
-vs-)	Case No. CIV-05-1181-F
)	
JET SERVICE ENTERPRISES, INC.,)	
et al.,)	
)	
Defendants.)	

ORDER

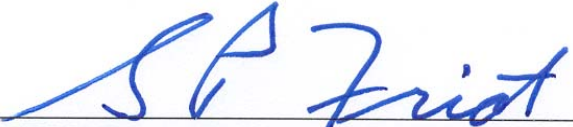
Before the court is plaintiffs' Motion to Reconsider Dismissal of State Law Claims, filed July 28, 2006 (doc. no. 52). In their motion, plaintiffs request the court to reconsider its order of December 30, 2005 dismissing plaintiffs' claims against defendants for wrongful discharge under Burk v. K-Mart Corp., 770 P.2d 24 (Okla. 1989). The basis for plaintiffs' request is the Oklahoma Supreme Court's recent decision in Saint v. Data Exchange, Inc., ___ P.3d ___, 2006 WL 1891747 (Okla., July 11, 2006), wherein the court recognized "a *Burk* tort remedy for those who allege employment age discrimination." *Id.*, 2006 WL 1891747 *2. Defendants object to plaintiffs' motion on the grounds that a petition for rehearing has been filed by the defendant in the Saint case. Defendants represent that several employers in Oklahoma, including defendant, Jet Service Enterprises, Inc., have sought leave to file *amicus curiae* briefs. Because the Saint opinion is still under judicial consideration, defendants request the court to deny plaintiffs' motion.

Upon due consideration of the parties' submissions, the court concludes that its prior ruling dismissing plaintiffs' Burk claims against defendant, Jet Service Enterprises, Inc., should be reconsidered and vacated in light of the Oklahoma Supreme Court's ruling in Saint. The court recognizes that a petition for rehearing has been filed, but nevertheless, concludes that plaintiffs should be allowed to proceed with their Burk claims against Jet Service. If the Saint decision is revised by the Oklahoma supreme Court before this case has been closed in this court, that development can be addressed if need be.

The Saint opinion, however, does not change the court's prior ruling as to the assertion of plaintiffs' Burk claims against defendant, Wyndel Blakemore. The court will therefore not reconsider its ruling as to dismissing plaintiffs' Burk claims against Blakemore.

Accordingly, plaintiffs' Motion to Reconsider Dismissal of State Law Claims, filed July 28, 2006 (doc. no. 52), is **GRANTED IN PART** and **DENIED IN PART**. Plaintiffs' claims against defendant, Jet Service Enterprises, Inc., for wrongful discharge under Burk v. K-Mart Corp., 770 P.2d 24 (Okla. 1989), are reinstated.

DATED August 22, 2006.



STEPHEN P. FRIOT
UNITED STATES DISTRICT JUDGE